



United States Department of the Interior

BUREAU OF LAND MANAGEMENT
MONTANA STATE OFFICE
222 NORTH 32ND STREET
P.O. BOX 36800
BILLINGS, MONTANA 59107-6800



IN REPLY TO:

MTM 31331
✓SDR-922-90-07
3165 (922.LB)

July 20, 1990

CERTIFIED--RETURN RECEIPT REQUESTED

DECISION

Mr. Barth E. Whitham)
Avalon Energy) SDR No.922-90-07
216 16th Street, Suite 100)
Denver, Colorado 80202-5125)

AFFIRMED

Avalon Energy (Avalon) requested a State Director Review (SDR) (Enclosure 1) of a \$5,000 assessment issued to Avalon by the Great Falls Resource Area Office (GFRA). The assessment was issued to Avalon under the authority of 43 CFR 3163.1(b)(2), due to failure on Avalon's part to comply with 43 CFR 3162.3-1c. Avalon was notified of the violation and assessment by letter dated May 11, 1990 (Enclosure 2).

The letter notified Avalon that a gas well had been drilled and completed in the E $\frac{1}{4}$ NE $\frac{1}{4}$, sec. 35, T. 34 N., R. 2 W., Toole County, Montana, federal lease No. MTM 31331, without a federally approved application for permit to drill (APD). The letter also notified Avalon of an assessment of \$500 per day times 10 days (the assessment is capped at \$5,000), totaling \$5,000.

On June 26, 1990, Avalon submitted requested supporting documents (Enclosure 3) to be included in the SDR. Avalon requested an oral presentation to present their case as per 43 CFR 3165.3(b) (Enclosure 2). Avalon's oral presentation was given at the Montana State Office (MSO) on July 17, 1990.

Avalon stated that their original intent was to drill the well in the legal center of the NE $\frac{1}{4}$ of section 35. Upon surface inspection and negotiations of surface damage with the surface owner, the location was moved 100 feet east to facilitate not disturbing a fence line and a cultivated field in the W $\frac{1}{2}$ NE $\frac{1}{4}$ of section 35. Moving the location 100 feet to the east caused the well to be drilled on federal lease MTM 31331. An oversight by Avalon's Land Department failed to realize that this location had now been moved on a federal lease and the proper application for permit to drill had not been pursued. Without this knowledge, Avalon pursued and was granted permission to drill the well from the State of Montana.

Avalon further stated that the Flesch Farms 2 well participates in an existing communitization agreement (CA) (NRM 1449), and all production payments concerning the Flesch Farms 2 well were made on a timely and accurate basis. Avalon also asked that the assessment be reduced from \$5,000 to \$2,500 because the actual drilling and completion time was 5 days (November 24 through 28, 1989).

Avalon contends that Avalon, at no time, had a malicious intent but instead tried with utmost effort to comply with all of the applicable State and Federal regulations, although unknowingly trespassing on the aforementioned Federal lease.

Avalon received state approval to drill the Flesch Farms 2 well on November 21, 1989 (Enclosure 4). The well was spudded on November 24, 1989, November 26, 1989, finished drilling the well and tubing was ran into the well on November 28, 1989. Avalon considered the well completed on December 4, 1989 (Enclosure 5), upon completion of well tests. Avalon was notified of the infraction by letter dated May 11, 1990, from the GFRA.

The regulation cited by the GFRA office for the violation was 43 CFR 3162.3-1(c) which states, "The operator shall submit to the authorized officer (AO) for approval an APD for each well. No drilling operations, nor surface disturbance preliminary thereto, may be commenced prior to the AO's approval of the permit.

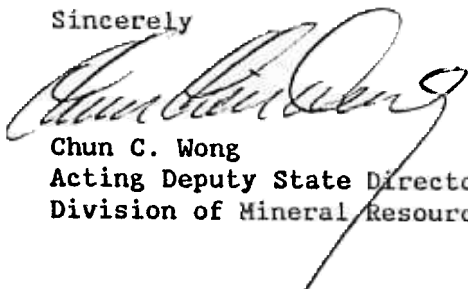
Also the basis for the assessment comes from 43 CFR 3163.1(b)(2) which states, "...for drilling without approval or for causing surface disturbance on federal or Indian surface preliminary to drilling without approval, \$500 per day for each day that the violation existed, including days the violation existed prior to discovery, not to exceed \$5,000."

The above regulation is very specific in determining the amount of assessment associated with drilling without an approved APD. The GFRA office notified Avalon by letter dated May 11, 1990, and the well was spudded on November 24, 1989. The time period from the date the well was spudded to the date Avalon was notified of the violation is 169 days. Therefore, the \$500 assessment per day times 10 days (capped at \$5,000) totaling \$5,000 is appropriate.

Based on the regulations we find that the GFRA office was correct in assessing the \$5,000 assessment to Avalon for drilling without a federally approved APD. Therefore, the GFRA office's decision and assessment is affirmed.

This Decision may be appealed to the Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR 4.400 and the enclosed Form 1842-1 (Enclosure 6). If an appeal is taken, a Notice of Appeal must be filed in this office at the aforementioned address within 30 days from receipt of this Decision. A copy of the Notice of Appeal and of any statement of reasons, written arguments, or briefs must be served on the Office of the Solicitor at the address shown on Form 1842-1. It is also requested that a copy of any statement of reasons, written arguments, or briefs be sent to this office. The appellant has the burden of showing that the decision appealed from is in error.

Sincerely



Chun C. Wong
Acting Deputy State Director
Division of Mineral Resources

6 Enclosures

- 1-SDR dated June 6, 1990 (26 pp)
- 2-GFRA Decision dated May 11, 1990 (2 pp)
- 3-Avalon's Supporting Documents for SDR (8 pp)
- 4-Avalon's State Approval (2 pp)
- 5-Avalon's State Completion Report (1 p)
- 6-Form 1842-1 (1 p)

cc: (w/o encls.)
DM, Lewistown
AM, GFRA